



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 13-01215
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: Cheryl Van Ackeren, Esquire

02/10/2016

Decision

WHITE, David M., Administrative Judge:

Applicant’s two half-brothers and cousin live low-profile lives in Somalia. He provided modest financial assistance to the cousin and a family friend between 2010 and 2013. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on August 21, 2012. On February 21, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline B (Foreign Influence). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on March 29, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 31, 2015. The case was assigned to me on April 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 21, 2015, and I convened the hearing, as scheduled, on August 12, 2015. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. The Government also offered Hearing Exhibit (HE) I, a request for administrative notice concerning Somalia, with five supporting documents that were marked and attached to the record as Administrative Notice exhibits (AN) I through V. Applicant had no objection to my taking administrative notice of the facts set forth in HE I. I found that the information contained in AN V was immaterial and irrelevant to either the Government's administrative notice request or Applicant's eligibility for a clearance, and held that it would not be considered for either purpose. I granted the administrative notice request concerning Somalia, and the facts set forth in HE I concerning that country are hereby incorporated as findings of fact by reference. (See Tr. 31-37.) Applicant offered Exhibits (AE) A through H, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 20, 2015.

Findings of Fact

Applicant is a 52-year-old multilingual interpreter who is pending employment with a defense contractor. He is married, with three children ages 18, 14, and 7. He has attended classes at several community colleges since entering the United States on a student visa in 1984, but never earned a degree. He earned a Microsoft Certified Solutions Expert certification in 2000. He has never served in the armed forces, or been granted a security clearance. However, as further discussed below, he deployed to Somalia with the U.S. Army as a contract interpreter from January 1993 to March 1994. (GE 1; GE 2; GE 3; Tr. 40-41, 44-46, 83.)

In his Answer, Applicant denied the factual allegations in the SOR, with explanations. Applicant's explanations and other statements contained in the record evidence are incorporated in the following findings.

Applicant was born in Somalia in 1963 and moved to the United States in 1984 to attend college. He overstayed his student visa, and eventually applied for asylum on the basis that the Somali government had jailed him for about a week in 1981 for engaging in an anti-government demonstration. His application was initially denied in 1990, and he appealed. After returning from his service as an interpreter for the U.S. Army in Somalia in 1994, he applied for and was granted political asylum in Canada in 1995. He was unable to find work there, however, and soon returned to the U.S. where he was granted his appeal for political asylum in 1997. He became a naturalized U.S. citizen in June 2012. (GE 1; GE 2; GE 3; Tr. 40-44, 48-50.)

Applicant's wife was also born in Somalia. They were married in the United States in 1996, and she became a naturalized U.S. citizen in August 2010. Her parents left Somalia and live in Kuwait. Applicant's mother became a naturalized U.S. citizen in

September 2012. His father died in 1984. All three of Applicant's children were born as citizens in the United States. Applicant has two older half-brothers and four half-sisters. The four half-sisters all left Somalia, and the eldest now lives in the United Arab Emirates (UAE). Two others are citizens and residents of Canada and the United Kingdom, respectively. His youngest sister resides in the United States, and became a naturalized U.S. citizen in 2007. His two half-brothers still live in the northern region of Somalia that asserts a separate, but internationally unrecognized, identity as "Somaliland."¹ (GE 1; GE 2; GE 3; AE G; Tr. 60, 74.)

Applicant's father was a tribal chief in the family's home town in northern Somalia. A tribal chief is the principal leader and mediator of disputes within the community. When he died, Applicant's eldest half-brother was elected to replace him in that role. This brother has no affiliation with the national government of Somalia, but serves as the chief within his tribal community. Applicant's other half-brother lives in the same town, and married one of Applicant's cousins. They had six children together. Around 2011, they divorced and Applicant's brother stopped providing support for his former wife and their children. Applicant argued with both of his brothers about this, because their culture requires the family to support children who are under age 16. After that disagreement, he stopped communicating with either of them, and described them as "losers" for failing to meet their obligations as the children's father and tribal chief, respectively. He had only sporadic communications with them before this issue arose, and none with either brother since 2011 or 2012. (GE 2; GE 3; Tr. 60-67, 86.)

Applicant provided some financial support for the subsistence of his cousin and her children because his brothers in Somalia were failing to do so. He made one direct transfer of \$200 in July 2011, and funneled other assistance through his U.S. citizen half-sister, who also helped them financially. Applicant was informed during his September 2012 Office of Personnel Management (OPM) interview that providing financial assistance to people in other countries could cause security concerns, so he stopped providing any financial assistance to his cousin and her children in late 2012 or early 2013. (GE 2; GE 3; AE H; Tr. 67-68, 74-79, 87-90.)

Between 2010 and 2012, Applicant also sent at least two contributions of \$50 each to his eldest sister, who lives in the UAE. These payments were made to help her pay for the services of a family friend who had agreed to move into her former home in Somalia to act as a watchman/caretaker to prevent looting and theft after the collapse of the Somali government. (Answer; GE 1; Tr. 68-69, 80-81.)²

¹This region was colonized by the British. The rest of Somalia was an Italian colony until 1960, when those European powers granted independence to Somalia. HE I; Tr. 39-40, 71-72.

²The exact amounts and duration of Applicant's contributions to this half-sister, and to his cousin as set out above, are difficult to fix based on various descriptions of these payments Applicant provided in responses to various questioners after initially disclosing them on his SF-86. He has made no effort to conceal any of these payments, and the different recorded interpretations are attributed to language difficulties instead of any deception or minimization. All were very modest amounts, and for honorable purposes in his attempts to assist family members in need. There is no evidence of any such payments after 2012 or 2013. (GE 1; GE 2; GE 3.)

Applicant earned authorizations from his state's Department of Social and Health Services, Language Testing and Certification division, to provide medical and social services interpreting in the Somali language. He performs interpreting services in those areas and others, including work for the local USCIS Federal Immigration Court. (AE A; AE B.)

During his deployment to Somalia as a uniformed civilian contract interpreter for U.S. Army forces in support of Operation Restore Hope during 1993 and 1994, Applicant earned several awards for his dedicated service under daily hazardous conditions in the field. These include four Certificates of Appreciation for his outstanding contributions and extraordinary personal commitment, signed by the Marine Corps lieutenant general commanding the Operation and the U.S. Special Envoy to Somalia, the Army lieutenant general serving as Deputy Chief of Staff for Intelligence, and two colonels who commanded different units he directly supported. (AE C; AE D; AE E.)

Applicant has no financial interests, property, or income source in any foreign country. All of his assets and immediate family members are, and have been, in the United States for many years as described above. (GE 1; GE 2; GE 3.)

Somalia has no history of enduring or effective national governance in its post-colonial history. It is home to a major East-African terrorist group. Government security forces have also committed human rights abuses. The other facts set forth in HE I are incorporated herein by administrative notice. (Tr. 31-37.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. The SOR allegations and evidence in this case raised potential security concerns under two foreign influence DCs:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant has two half-brothers and a cousin, who was formerly married to one of those brothers, who are resident citizens of Somalia. One brother is a tribal chief, which potentially raises his public profile, but connotes no connection with the Somali government. Applicant provided modest financial support between 2010 and 2013 to the cousin and her children, and to a family friend who looked after a home in Somalia that is owned by his half-sister who lives in the UAE. Somalia is home to a major terrorist organization, and its government does not provide effective security or protection of human rights. Accordingly, the presence of these individuals in Somalia theoretically creates a heightened risk of pressure or coercion, and a potential conflict of interest that could arise from a desire to help them.

AG ¶ 8 provides conditions that could mitigate security concerns. Those with potential application in mitigating security concerns in this case are:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's relationships with his half-brothers, cousin, and family friend are so minimal, and they live such low-profile lives in Somalia, that he clearly established mitigation under AG ¶¶ 8(a) and (c) with respect to those relationships. His immediate family members are all U.S. citizens residing here. His social and financial connections

are entirely within the United States, not Somalia, so AG ¶¶ 8(b) provides further mitigation of any potential security concerns under AG ¶¶ 7(a) or (b).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and responsible individual, who testified in a sincere and credible manner. He is estranged from his two half-brothers in Somalia due to his disdain over their abandonment of his cousin and her children. He ceased providing the modest financial contributions to his cousin, her children, and the caretaker of his sister's house after being informed that security concerns could result. He has neither communicated with, nor provided assistance to, any of them since 2012 or 2013.

Applicant's mother, wife, children, and another sister are all U.S. citizens and residents. He has lived in the United States since 1984, except during the 15 months when he accompanied U.S. Army forces to Somalia in support of Operation Restore Hope in 1993 and 1994, and his brief period of asylum in Canada thereafter. He earned impressive formal recognition for his service under dangerous and arduous conditions during that deployment. See ISCR Case No. 05-03846 at 6 (App. Bd. Nov 14, 2006). Overall, the record evidence creates no question or doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge